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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Stuart Ozer

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EXAMINER

VAN HANDEL, MICHAEL P

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/991,025	Applicant(s) OZER ET AL.	
	Examiner MICHAEL VAN HANDEL	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/09/2008 & 5/30/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/30/2008 has been entered.

Response to Amendment

This action is responsive to Amendments filed 5/09/2008 and 5/30/2008. Claims **1-21** are pending. Claims **1, 3, 8-10, 12, 15-20** are amended. Claims **22-44** are canceled. The examiner hereby withdraws the objections to claims **1-20** in light of the amendment.

Response to Arguments

Applicant's arguments regarding the Zigmond et al. reference, filed 5/09/2008, have been fully considered, but they are not persuasive.

Regarding claims **1-21**, the applicant argues that Zigmond et al. (U.S. Patent No. 6,698,020) is an improper reference for any rejection based on 35 U.S.C. § 103, because Zigmond et al. was, at the time the present invention was made, commonly assigned to, or subject to assignment to, the Assignee of the present application. The examiner notes; however, that U.S. Patent No. 6,698,020 was not relied on for the previous rejection. U.S. Patent No.

Art Unit: 2623

6,698,020 was relied upon in the Office Action mailed 7/10/2006. In response to that Office Action, Applicant argued that the patent was commonly assigned to the Assignee at the time that the invention was made. As such, the examiner noted in the Office Action mailed 10/18/2006 that the Zigmond et al. reference now relied upon is International Publication Number WO 99/66719 to Zigmond et al., which was published on December 23, 1999. Since the invention was described in WO 99/66719 more than one year prior to the date of application for patent of the present invention, the examiner maintains that the International Publication WO 99/66719 is proper for a rejection based on 35 U.S.C. § 103.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims **13-20** are rejected under 35 U.S.C. 101, because the claims are directed to non-statutory subject matter. The examiner notes that programs constitute functional descriptive material; however, functional descriptive material is nonstatutory when claimed as descriptive material *per se*. The examiner further notes that the claim recites a computer readable storage medium carrying computer executable instructions; however, the examiner notes that the specification defines that the medium can be a communications connection to a computer, either hardwired, wireless, or a combination of hardwired or wireless (p. 15, 16, paragraph 41 of Applicant's specification). The examiner notes that a claim directed to a signal *per se* does not appear to be a process, machine, manufacture, or composition of matter. See **MPEP 2106.01** for guidance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **1, 3-11, 13, and 17-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nathaniel and Carruthers et al. (which is incorporated into Nathaniel by reference as noted in p. 1, paragraph 15 of Nathaniel) in view of Zigmond et al.

Referring to claims **1, 13, and 21**, Nathaniel and Carruthers et al. disclose at a server computing system/computer program product that is at least intermittently connected to one or more receiver modules (plurality of client machines 10)(Carruthers et al. Figs. 1, 2) in a network, wherein the server computing system comprises a planning module (Master Server 18) and a control module (PoP Server 16), wherein the planning module comprises an interface module (advertiser portal of Dynamic Campaign Manager component 50), a data module (Inventory Manager 51), a reservation module (Capacity Forecaster 52), and an aggregation module (master database 60), and wherein the one or more receiver modules are configured to display advertisements associated with an advertising campaign on a display device (Carruthers et al. p. 1, paragraph 15), a method for scheduling the advertising campaign to achieve an advertising impression goal, the method comprising:

Art Unit: 2623

- receiving historical data from the one or more receiver modules, the historical data comprising data about delivered advertising impressions and time of day (Carruthers et al. p. 2, paragraph 19 & p. 3, paragraphs 29, 38, 39);
- aggregating the received historical data (the examiner notes that the On-Demand Scheduler 70 retrieves whether the subscriber has previously been sent an advertisement, when that subscriber was last sent the advertisement, and how many total times the subscriber has been sent the advertisement and forwards feedback information to the Master Server)(Carruthers et al. p. 2, 3, paragraphs 23, 26, 28-30, 35, 38; p. 4, paragraph 41; & Figs. 1, 2)(Nathaniel p. 11, paragraphs 103, 105 & Fig. 2);
- the control module applying a rule to the aggregated historical data to generate estimated historical data representative of all available receiver modules (Carruthers et al. p. 3, paragraphs 39)(Nathaniel p. 4, paragraph 31);
- delivering the estimated historical data to the planning module (Carruthers et al. p. 2, 3, paragraphs 24, 26 & p. 4, paragraph 41);
- the planning module retrieving campaign data representing a number of advertising impressions of advertisements scheduled for future display to one or more target viewers (Carruthers et al. p. 3, paragraphs 29, 30);
- the planning module combining the historical data and campaign data to generate a schedule of available advertising inventory, the schedule usable by an advertiser to reserve advertising inventory for the advertising campaign so that the advertising impression goal for the advertising campaign is achieved within a timeframe and

Art Unit: 2623

- among the one or more target viewers (Carruthers et al. p. 2, paragraphs 23-26; p. 3, paragraphs 28-34; & Fig. 3);
- the reservation module assigning weights to advertisements in the advertising campaign, the weights defining a type of display frequency for the advertisements and advertisement content associated therewith (Carruthers et al. p. 3, paragraphs 28-35);
 - generating one or more metadata files associated with advertisement content (Nathaniel p. 4, paragraphs 33-38), the one or more metadata files comprising an ID attribute uniquely identifying advertising content (Nathaniel p. 4, paragraph 34), an ad type attribute indicating whether an advertisement is committed or flexible (Nathaniel p. 11, paragraph 108), an ad weight attribute which is a number (Nathaniel p. 4, paragraph 36) and wherein an absolute weight is calculated as an impression goal for a committed advertisement divided by a total inventory (the probability of delivery for each ad is calculated as the weight of the ad divided by the sum of the weights for the ads with the same priority. The probability of delivery corresponds to the percentage of available time slots over the time period in which the ad will be displayed)(Nathaniel p. 4, paragraphs 42, 44), and a schedule element describing when advertising content is to be displayed to a viewer (Carruthers et al. p. 3, paragraph 39); and
 - delivering advertisement content and metadata files associated with the advertisements to at least one receiver module (Carruthers et al. p. 4, paragraph 41).

Art Unit: 2623

Nathaniel and Carruthers et al. further disclose that the set-top box at the client can perform the function of dynamically constructing the ordered list of advertisements to be delivered if there is no back channel of communication at the client (Nathaniel p. 3, paragraph 30). Nathaniel and Carruthers et al. do not specifically disclose performing this function at the set-top box when a back channel exists; however, Zigmond et al. discloses locally ordering the delivery of advertisements according to designated ad selection criteria when a back channel exists (p. 5, l. 29-31 & p. 6, l. 1-5, 17-26). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the set-top box of Nathaniel and Carruthers et al. to dynamically construct an ordered list of advertisements to be delivered when there is a back channel, such as that taught by Zigmond et al. in order to provide a system for selecting advertisements at a more local level (Zigmond et al. p. 5, lines 8-12) and to increase the efficiency of television advertising (Zigmond et al. p. 5, lines 20-21). The combination of Nathaniel and Carruthers et al. and Zigmond et al. further does not specifically disclose that the historical data comprises geographic information, demographic information, and programming viewed with the advertising impressions. Zigmond et al. discloses collecting viewer information, including geographic location (p. 15, lines 13-15), demographic information (p. 15, lines 8-15), and the amount of time viewing particular channels and preferred types of programming (p. 16, lines 1-2)(p. 25, lines 12-16) and targeting advertisements on the basis of the geographic location (p. 21, lines 2-3), demographic information (p. 20, lines 25-26), and program watched (p. 18, lines 9-11). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the feedback and targeting data of Nathaniel and Carruthers et al. to include geographic location, demographic information, and programming viewed, such as that

Art Unit: 2623

taught by Zigmond et al. in order to more specifically target viewers in order to tailor advertisements to the interests and needs of viewers (p. 5, lines 6-8).

Referring to claim **3**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method as recited in claim 1, further comprising a step for notifying an individual when a requested impression goal for the advertising campaign exceeds the available advertising inventory (Carruthers et al. p. 2, paragraph 25).

Referring to claim **4**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method as recited in claim 1, further comprising a step for booking multiple advertising campaigns within the same timeframe and target, allowing the total advertising inventory to be split among these simultaneous campaigns according to various weights (Carruthers et al. p. 3, paragraphs 32-34).

Referring to claims **5** and **6**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method as recited in claim 4, further comprising a step for overbooking one or more entries in the schedule of the available advertising inventory (setting a campaign goal that exceeds available advertising inventory projections) and a step for resolving a conflict between the requested impression goal and the available advertising inventory (identifying and suggesting which constraints could be relaxed in order to achieve campaign goals)(Carruthers et al. p. 2, paragraph 25).

Referring to claims **7** and **17**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method/computer readable medium as recited in claims 1 and 13, respectively, further comprising a step for defining each of the one or more target viewers, each target viewer being defined by at least one of advertisement location data (see relevant passages

Art Unit: 2623

from Zigmond et al. cited in the rejection of claim 1 above), market area data (see relevant passages from Zigmond et al. cited in the rejection of claim 1 above), and data indicative of a time interval that the advertisement is active (Carruthers et al. p. 3, paragraph 38).

NOTE: The USPTO considers the applicant's "at least one of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Referring to claims **8** and **18**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method/computer readable medium as recited in claims 1 and 13, respectively, further comprising a step for defining each of the advertisements as either a committed advertisement or a flexible advertisement (In addition to creating active advertising campaigns, Carruthers et al. discloses providing a set of default filler advertising impressions to be displayed when there is no content available for a given user)(Carruthers et al. p. 5, paragraph 75).

Referring to claims **9** and **19**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method/computer readable medium as recited in claims 1 and 13, respectively, further comprising a step for weighting the advertisement, the weighting defining a frequency of display of the advertisement (Carruthers et al. p. 3, paragraphs 34, 35).

Referring to claims **10** and **20**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method/computer readable medium as recited in claims 1 and 13, respectively, further comprising a step for adjusting an advertising type and weights of the campaign at various times to avoid conflicts or overbooking before or during a scheduled campaign (this limitation is met by the citations noted in the rejection of claim 9 above).

Art Unit: 2623

Referring to claim **11**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method as recited in claim 1, wherein the control module comprises an advertising module (remote local database 76)(Carruthers et al. p. 2, paragraph 22 & Fig. 2), a manager module (Matcher 72)(Carruthers et al. p. 3, paragraph 38 & Fig. 2), and a historical data module (On-Demand Scheduler 70)(Carruthers et al. p. 3, paragraphs 38, 39 & Fig. 2), and the method further comprising the advertising module storing data in a database (remote local database 76), the data comprising advertisement content for advertisements (Carruthers et al. p. 2, paragraph 22).

3. Claims **2**, **12**, and **14-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nathaniel and Carruthers et al. in view of Zigmond et al. and further in view of Cannon.

Referring to claims **2** and **14**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method/computer program product as recited in claims 1 and 13, respectively. The combination of Nathaniel and Carruthers et al. and Zigmond et al. fails to specifically teach a step for displaying the schedule using a graphical user interface. Cannon discloses a graphical user interface 125 that provides access to a database mining engine (DME) 126, 127, that provides an opportunity for a media planner to distribute advertisements over time or space based on actual or anticipated individual or collective advertising exposure (col. 28, l. 22-31). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the combination of Nathaniel and Carruthers et al. and Zigmond et al. to provide an advertiser with a graphical user interface, such as that taught by Cannon in

Art Unit: 2623

order to provide a more effective system for scoring, comparing and optimizing advertising campaigns for advertising agencies (Cannon col. 3, l. 21-25).

Referring to claim **12**, the combination of Nathaniel and Carruthers et al. and Zigmond et al. teaches a method as recited in claim 1, wherein the data module comprises an overall advertising inventory module (Campaign Forecaster 52) and an advertising detail inventory module (Delivery Manager 54), the overall advertising inventory module providing a summary view of advertising impression inventory and scheduled advertising campaigns, including information about a total number of advertising impressions available and a total number of advertisements that have been scheduled as committed (Carruthers et al. p. 3, paragraphs 28-30) and the advertising detail inventory module providing detailed scheduling information for each scheduled advertisement comprising information relating to each advertisement including a total impression goal and advertising weight for any defined target (Carruthers et al. p. 3, paragraphs 33-35). The combination of Nathaniel and Carruthers et al. and Zigmond et al. does not specifically teach providing a summary view of a total number of scheduled flexible advertisements and a total weight of flexible advertisements for any defined target criteria; however, Cannon discloses a user interface that allows a media planner to create a base advertising plan and a listing of alternative spots to add or remove, media objective values, and weighting values (col. 70, l. 1-14 & Figs. 35, 41). To optimize a plan or schedule, a planner would enter an objective, weighting values, the base plan, and the list of alternative slots. The system would return a listing of the alternative spots ranked according to score (Fig. 41). The user would then select from among the alternatives and add the spot to the list (col. 70, l. 15-22). It would have been obvious to one of ordinary skill in the art at the time that the invention was

Art Unit: 2623

made to modify the advertiser portal in the combination of Nathaniel and Carruthers et al. and Zigmond et al. to include a graphical user interface allowing an advertiser to compare weighted scores of alternative options for adding an additional advertising slot, such as that taught by Cannon in order to provide a more effective system for scoring, comparing and optimizing advertising campaigns for advertising agencies (Cannon col. 3, l. 21-25).

Referring to claim **15**, the combination of Nathaniel and Carruthers et al., Zigmond et al., and Cannon teaches a computer program product as defined in claim 14, wherein the computer readable medium further carries computer executable instructions for performing a step for notifying an individual utilizing the planning module when a requested impressions of the advertising campaign exceeds the available advertising inventory (Carruthers et al. p. 2, paragraph 25).

Referring to claim **16**, the combination of Nathaniel and Carruthers et al., Zigmond et al., and Cannon teaches a computer program product as defined in claim 14, wherein the computer readable medium further carries computer executable instructions for performing a step for overbooking one or more entries in the schedule of the available advertising impressions (setting a campaign goal that exceeds available advertising inventory projections)(Carruthers et al. p. 2, paragraph 25).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL VAN HANDEL whose telephone number is (571)272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

Art Unit: 2623

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/
Supervisory Patent Examiner, Art Unit
2623

MVH